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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
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10/520,961

10/25/2005

Olivier Carli

38918

4903

39313 7590 05/13/2008

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EXAMINER

WOODALL, NICHOLAS W

ART UNIT

PAPER NUMBER

3733

MAIL DATE

DELIVERY MODE

05/13/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |                                       |  |
|------------------------------|--------------------------------------|---------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/520,961 | <b>Applicant(s)</b><br>CARLI, OLIVIER |  |
|                              | <b>Examiner</b><br>Nicholas Woodall  | <b>Art Unit</b><br>3733               |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 31 December 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

1. This action is in response to applicant's amendment received on 12/31/2007.

#### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 3-6, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Taylor (U.S. 6,267,765).

Regarding claim 1, Taylor discloses a device comprising a bone anchor element (4), spherical articulation between the anchoring element (4) and a threaded shaft (7), and a rotational linkage means (11 and 12) as shown in Figures 1 and 2 below. The bone anchor element is provided with a head (5). A means for spherical articulation is provided between the head (5) of the anchoring element and a threaded shaft (7). A rotational linkage means (11 and 12) is also provided between the bone anchor element (4) and a threaded shaft (7). Regarding claim 3, Taylor discloses a device wherein the rotational linkage includes a female geometry (12) and complementary male geometry (11). Regarding claim 4, Taylor discloses a device wherein one of the geometrical forms is located on the bone anchor element (4) and the other is located on the threaded shaft (7). Regarding claim 5, wherein one of the geometrical shapes is provided on the end face of the bone anchor element (4). The geometrical shape (12) extends within an open housing (57) in the head of the bone anchor (4) for receiving the end (11) of the

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threaded shaft (7). The ends (11 and 12) of the bone anchor (4) and the threaded shaft (7) form a ball and socket joint to form the spherical articulation between the two elements. Regarding claim 6, Taylor discloses a device wherein the transverse face (bottom surface of element 14) of the ball and socket joint and the end face (upper face of element 57) of the bone anchor (4) are separated by a distance to allow for multiple orientations of the threaded shaft (7). Regarding claim 9, Taylor discloses a device wherein the receiving head (5) forms a grip nut for a screwing tool.

Figure 1

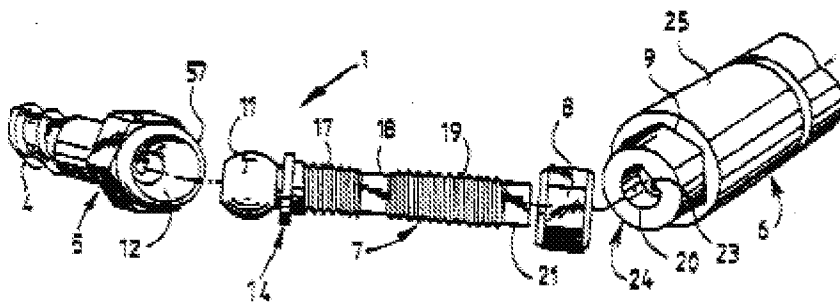
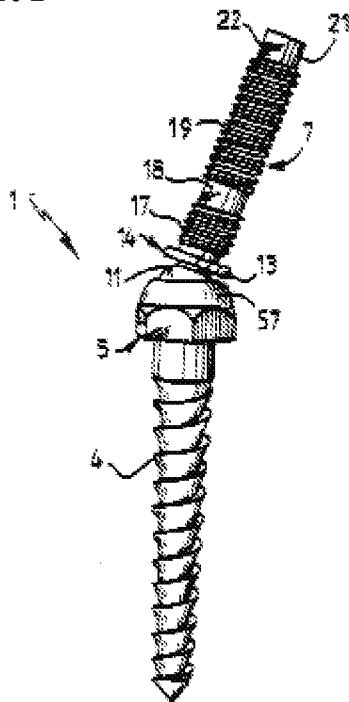


Figure 2



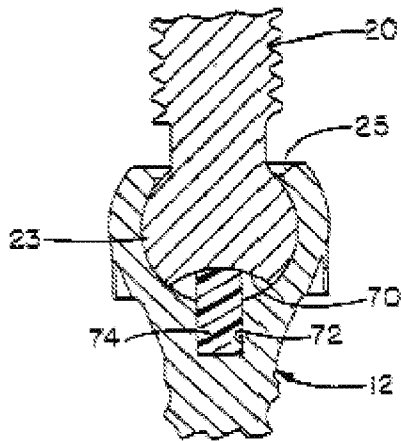
4. Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Altarac (U.S. Publication 2004/0006342).

Regarding claim 1, Altarac discloses a device that comprises a bone anchor (12), spherical articulation between the bone anchor (12), a threaded shaft (20), and a rotational linkage (70 and 72) means between the bone anchor (12) and the threaded shaft (20) as shown in Figure 3 below. The bone anchor (12) is provided with a head (18). A means for spherical articulation is provided between the head (18) of the anchor (12) and the threaded shaft (20). Regarding claim 2, Altarac discloses a device wherein the rotational linkage means (70 and 72) are located outside of the spherical articulation means (23 and 24). Regarding claim 3, Altarac discloses a device wherein the rotational linkage means comprises a female geometry (70) and a complementary male geometry

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(72). Regarding claim 4, Altarac discloses a device wherein one of the geometrical forms is located on the bone anchor (12) and the other geometrical form is located on the threaded shaft (20). Regarding claim 5, Altarac discloses a device wherein one of the geometrical forms (74) is provided on an end face of the bone anchor (12). The geometrical form (74) extends within an open housing (24) provided in the head (18) of the anchor (12) and receives the end (23) of the threaded shaft (20) to form a ball and socket joint for the spherical articulation. The other geometrical form (70) is located on a transverse face of the ball and socket joint (23). Regarding claim 6, Altarac discloses a device wherein a transverse surface (70) of the ball and joint socket is located a distance from a end face (upper face of element 25) of the bone anchor (12) to allow multiple orientations of the threaded shaft (20). Regarding claim 7, Altarac discloses a device wherein at least one of the transverse faces of the ball and socket joint (23 and 24) or the end faces of the bone anchor (12) have a convex shape. Regarding claim 8, Altarac discloses a device wherein the male geometrical form (74) is on the bone anchor (12) and the female geometrical form (70) is located on the ball and socket joint (23).

Figure 3



### ***Response to Arguments***

5. Applicant's arguments filed 12/31/2007 have been fully considered but they are not persuasive. In response to Applicant's argument that neither Taylor nor Altarac disclose a device including certain features of Applicant's invention, the limitations on which the Applicant relies (i.e., the rotational linkage is not capable of allowing the threaded shaft to rotate independently of the bone anchoring element) are not stated in the claims. Therefore, it is irrelevant whether the reference includes those features or not. The claims only require a rotational linkage that maintains the threaded shaft at multiple orientations relative to the bone anchor portion. Therefore, the elements in each reference as discussed above link the threaded shaft and the bone anchoring element such that the threaded shaft is capable of being rotationally oriented in multiple positions relative to the bone anchor element. The examiner has not presented any new

grounds of rejection and used the same grounds of rejection making this office action **FINAL**.

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas Woodall whose telephone number is (571)272-5204. The examiner can normally be reached on Monday to Friday 8:00 to 5:30 EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nicholas Woodall/

Examiner, Art Unit 3733

/Eduardo C. Robert/

Supervisory Patent Examiner, Art Unit 3733